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RECENT DECISIONS

CONSTITUTIONAL LAW—CONGRESS MAY REGULATE INTRASTATE COMMERCE AS INCIDENT TO REGULATION OF INTERSTATE COMMERCE.—The Interstate Commerce Commission, under authority of the Interstate Commerce Act as amended by the Transportation Act of 1920, directed the interstate railroads operating in intrastate commerce in the State of New York to increase their intrastate rates for the purpose of bringing them up to the level of the interstate rates previously fixed by the Commission. The State of New York filed a bill in equity against the United States and the commission to annul and enjoin the enforcement of this order. It was shown that the maintenance of the lower rates on a carrier between two intrastate points tended not only to divert travel to the border points, but also diverted it from other interstate railroads, and resulted in the loss of nearly \$12,000,000 in revenue that would be earned under the interstate rates; hence, this was an undue, unreasonable, and unjust discrimination against interstate commerce. *Held*, injunction denied. *State of New York v. United States*, 42 Sup. Ct. 238 (1922).

The power of the federal government to regulate transportation is limited to interstate commerce, and the authority of a State to regulate transportation within its own borders, including the power to prescribe rates for transportation, is not unconstitutional. *Louisville, etc., R. Co. v. Garrett*, 231 U. S. 298 (1913); *Oregon R., etc., Co. v. Cambell*, 230 U. S. 525 (1913).

In regard to the power confided to Congress by the Constitution to regulate commerce among the several States, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. *Gibbons v. Ogden*, 9 Wheat. 1, 196 (1824); see also *Brown v. Maryland*, 12 Wheat. 419, 446 (1827).

While Congress does not possess authority to regulate the internal commerce of a State, as such, it does possess power to foster and protect interstate commerce, although in taking necessary measures so to do, it may be necessary to control intrastate transactions of interstate carriers. Accordingly, where the relation between intrastate and interstate rates is such as to constitute a discrimination against, and a burden on, interstate commerce, Congress may correct the discrimination, even though in so doing it indirectly regulates intrastate rates. *Houston, etc., R. Co. v. United States*, 234 U. S. 342 (1914). And see *Chicago, etc., R. Co. v. State Public Utilities Comm.*, 268 Ill. 49, 108 N. E. 729 (1915). And in removing injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter to the level of the former. *Houston, etc., R. Co. v. United States*, *supra*.

In another recent case, in which as in the instant case the opinion was delivered by Chief Justice Taft, practically the same conclusion was reached. An injunction was granted restraining the State authorities from penalizing railroads for complying with an order of the Interstate Com-

merce Commission raising the intrastate rates to the level of the interstate rates. *Railroad Commisssion of Wisconsin v. Chicago, etc., R. Co.*, 42 Sup. Ct. 232 (1922). The decisions of Chief Justice Taft seem eminently sound, as securing the freedom of interstate commerce from local control.

CONSTITUTIONAL LAW—RELATION OF LANDLORD AND TENANT AFFECTED WITH PUBLIC INTEREST—REGULATION OF RENT VALID EXERCISE OF POLICE POWER.—There existed in the larger cities of the State of New York an insufficient supply of dwelling houses and apartments. In September, 1920, the Legislature, for the purpose of securing to tenants in possession of houses or apartments occupied for dwelling purposes in certain cities, authorized such tenants to continue in possession until Nov. 1, 1922, by the payment of a reasonable rental to be determined by the courts. The Act also provided that it should be a defense to an action by a landlord in such cities that the rent demanded for his dwelling house "is unjust and unreasonable, and that the agreement under which it is sought to be recovered is oppressive." The defendant leased an apartment from the plaintiff to Oct. 1, 1920, at a stipulated rental, payable in monthly installments in advance. While in possession under his lease the defendant executed a new lease for two years, beginning on the expiration of his former lease, at an increased rental. The defendant refused to pay the increased amount of the rent due on Oct. 1, 1920, and asserted his right to continue in possession by virtue of the Act mentioned above. The plaintiff brought a suit against the defendant to recover one month's rent at the increased rate stipulated for in the renewal lease. The defendant averred that the lease was executed under duress and coercion of a threat of eviction, and that the lease was unjust, unreasonable and oppressive. *Held*, plaintiff could not recover. *Edgar A. Levy Leasing Co. v. Siegel*, 42 Sup. Ct. 289 (1922).

The essential question presented in this case for decision was the constitutionality of the Emergency Housing Laws of the State of New York, 1920. The Act was held to be constitutional by a divided court, three of the Justices dissenting. The same question was also considered in *Marcus Brown Holding Co. v. Feldman*, 256 U. S. 170 (1921) and in *Block v. Hirsh*, 256 U. S. 135 (1921).

In the instant case the court began by stating that a private business may, under certain circumstances, become affected with a public interest so as to justify regulation by the State under its police power. Several of the cases cited to sustain this proposition, however, deal with the right of eminent domain. *Clark v. Nash*, 198 U. S. 361 (1905); *Strickley v. The Highland Boy Gold Mining Co.*, 200 U. S. 527 (1906); *Mt. Vernon-Woodberry Cotton Co. v. Alabama Interstate Power Co.*, 240 U. S. 30 (1916). Other cases cited to contain instances of the exercise of the police power similar to the one at bar were all concerned with laws sustained as preventing danger to life and limb. Thus, a Massachusetts Statute limiting the height of buildings was sustained as an effort to prevent the spread of fire. *Welch v. Swasey*, 214 U. S. 91 (1909). And a law regulating the erection of billboards was not upheld until the court could find the far-fetched ground that billboards were apt to spread fire and serve as a lurking place for criminals. *Cusack v. Chicago*, 242 U. S. 526 (1917); *St. Louis*